Mr. KEFAUVER. Mr. President, I also ask unanimous consent that an article published in th Knoxville Journal of April 6, 1963, concerning TVA's plans to replace Hales Bar Dam because of a worsening leakage problem, be printed at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

TVA To Replace Hales Bar Dam

Directors of Tennessee Valley Authority yesterday announced their decision to build a new dam and navigation lock on the Tennessee River to replace the 50-year-old Hales Bar Dam west of Chattanooga, at which a leakage problem is gradually getting worse.

Preliminary plans are to build the new dam downstream from the existing one between Hales Bar and the mouth of the Sequatchie River. TVA said details of design and cost were not yet available.

"The decision to replace Hales Bar with a new dam was reached after a detailed review of efforts which have been carried on over the past several years to reduce leakage under the old dam," the TVA board said. "Recent engineering studies reveal that improvements required at Hales Bar would be more extensive than previously indicated and their success in completely sealing and stabilizing the dam could not be assured."

The agency said there is no current danger of a failure of Hales Bar Dam, which it purchased from Tennessee Electric Power Co. in 1939, but that there are indications of "a continued worsening of the leakage. It explained that a dam in that vicinity is necessary to maintain a continuous navigation channel.

The old dam "has been plagued with foundation problems since construction began in 1905," TVA said, asserting that preliminary study indicates a favorable site with good foundation condition can be found downstream.

ANNUAL REPORTS BY SUBCOMMITTEES OF COMMITTEE ON THE JUDICIARY

Mr. KEFAUVER. Mr. President, I wish to express my attitude toward "Annual Reports" of Senate Judiciary Subcommittees as required by identical provisions in all authorization resolutions.

These are necessarily filed as reports of the Committee on the Judiciary, U.S. Senate, "made by its subcommittees" pursuant to the particular resolutions authorizing investigations and studies in the preceding year. Perhaps we are all in general agreement that these are annual reports of the subcommittees, nothing more, even though they must technically be filed from the full Judiciary Committee. But misunderstanding can arise from time to time, by the nature of the subject matter or the tone of the presentation.

As a member of the Committee on the Judiciary, I feel that these annual subcommittee reports—as distinguished from reports on specific bills or resolutions—should be filed as approved by a majority of the subcommittee members. If there are to be dissents, or minority or separate views, these should normally be made by other members of the subcommittee involved, rather than by members of the full committee who are not on the subcommittee. This is not to abdicate responsibility by members of the full committee; this is a method of assuring that the Senate will receive the language chosen by the subcommittee in each instance to describe its own work of the past year. In some situations, of course, members of the full committee may suggest revisions to the subcommittee, but I do not favor this as a standard practice.

Therefore, it should be understood that the fact that I do not submit dissenting or separate views with regard to any annual report does not mean that I am in agreement with the report; as I obviously do not agree with the exposition nor the conclusions reached in all of the annual reports that have been or will be submitted by the 14 standing and special subcommittees.

JOINT AUTHORITY OF THE SENATE AND HOUSE OF REPRESENTATIVES TO ORIGINATE APPROPRIATION

Mrs. SMITH. Mr. President, it was my pleasure and privilege to appear this past Sunday on what has become a widely acclaimed television program—the weekly telecast of Senator KENNETH KEATING. On that program Senator KEATING asked me if there was any action Congress could take to shorten its lengthy sessions. My answer was that if it permitted the Senate to originate half of the appropriation bills the session could be shortened significantly.

There are two schools of thought in opposition to the proposal of dividing the initiation of appropriations bills between the House and Senate. One school of thought advocates the abolition of the House Appropriations Committee and the abolition of the Senate Appropriations Committee—and their replacement with a Joint Committee on Appropriations.

I do not agree with this suggestion. It may appear to have much logic on its face—but when you probe beneath the surface it has potentialities that could lead to far reaching changes that perhaps even its proponents would not like.

It is true that we have joint committees between the House and Senate, but with the exception of those on Atomic Energy, Defense Production, Immigration and Nationality Policy, and Internal Revenue Taxation, and the Joint Economic Committee, the activity of joint committees is limited and rarely do they hold hearings.

Of these exceptions, only the Joint Committee on Atomic Energy has any legislative jurisdiction. The others may hold hearings and make studies, but proposed legislation is never referred to them for action. And even the Joint Committee on Atomic Energy is limited to being an authorization committee, and has no jurisdiction over appropriations for atomic energy. That jurisdiction is retained by the Appropriations Committee.

There are two basic legislative functions: the first is to authorize; the second is to appropriate. In recent years, a third function has emerged—to investigate. But for practical purposes, the backbone of legislation is authorization and appropriation—and not investigation.

In short, roughly half of the work of the House—and half of the work of the Senate—half of the work of the Congress—is appropriations. To appropriate through a joint committee and follow the precedent of the relatively young Joint Committee on Atomic Energy would, in effect, to a great extent make Congress a unicameral legislature instead of the bicameral character given it by our Constitution.

Thus, the spirit—if not, the letter—of the Constitution would be amended by indirection in the creation of a Joint Committee on Appropriations—rather than by the direct method of amending the Constitution by a constitutional amendment requiring not only two-thirds approval of both the House and Senate but also three-fourths of the States. Frankly, I think this would be an unacceptable shortcut.

Furthermore, if the function of appropriating—which accounts for half of the work of Congress—is to be vested in a joint committee, then what valid answer is there to the logic of "what is good enough for appropriating is good enough for authorizing, for legislating" and in all consistency make all the authorizing or legislating committees of the House and Senate joint committees.

For if the logic for a Joint Committee on Appropriations is valid and acceptable, surely it is just as acceptable and valid for the creation of Joint Committees on Agriculture and Forestry, on Armed Services, on Banking and Commerce, on Aeronautical and Space Sciences, on Commerce, on Revenue and Finance, on Foreign Relations, on Government Operations, on the Judiciary, and so forth.

Yes, if you start with appropriations, where can you logically draw the line? And then where do you end up—with neither the House nor the Senate having its separate committees—with all committee work being done on a unicameral basis. And if you have all committee work done on a unicameral basis, then why not have the actual debate and voting on a unicameral basis? Why not just have one legislative body instead of two?

But if you do this, then several complex and difficult questions arise. First, the Constitution will have to be amended. Second, the concept of balances and checks within the legislative branch of our Government will have been abolished. Third, the balance between direct representation of the people by population in the House and the representation of the States, without reference to population, in the Senate, will have been eliminated.

If representation of the States—the balance against representation of the population—is eliminated, then what kind of compromise can be effected? Unless representation by States is to be abolished completely and arbitrarily, what workable compromise is there?

I do not think the American people want a unicameral Congress—but that is exactly the direction of the proposal of abolition of the House Appropriations

Committee and the Senate Appropriations Committee and replacement of them with a Joint Committee on Appropriations.

If such an attempt is to be made, then I propose that it be done the direct and straightforward way through a constitutional amendment in which the States can have their say, rather than the back door, indirect and shortcut way of Congress taking such action by resolution to the exclusion of a direct voice of the people through their States.

The other school of thought that opposes equal division of the initiation of appropriation bills by the House and Senate—of giving the Senate the right to start half of the appropriation bills instead of the House retaining that privilege exclusively—bases such opposition on the contention that the Constitution reserves such an exclusive right to the House.

An analysis of this contention has been made by one of the most learned men to ever serve on the staff of Congress—Dr. Eli E. Nobleman, a member of the professional staff of the Senate Committee on Government Operations for more than 15 years. It is incorporated in a memorandum dated April 3, 1963.

Dr. Nobleman, who holds an earned doctorate in public law, has prepared a number of studies of this type for the committee, dealing with various aspects of constitutional law and public law. It was my privilege to serve on the Committee on Government Operations for several years and to have the opportunity to witness the excellent work of Dr. Nobleman.

He is undoubtedly one of the foremost authorities in our country on the subject of Federal-State-local relations and has performed tremendously valuable service to the committee, the Senate, and the country in this very important field.

And while I am making reference to Dr. Nobleman, I also want to pay tribute to the staff director and the professional staff members of the full Senate Government Operations Committee, for in my opinion they constituted one of the most outstanding staffs in the entire history of Congress—at least in the 23 years that it has been my privilege to serve in Congress.

Dr. Nobleman's learned study is most impressive. But it is more than that. It is readable and understandable rather than being couched in complex legalistic terms. I invite the attention of every Member of this body to it. While it was printed in the hearings on S. 537, to create a Joint Committee on the Budget, as an Appendix to the RECORD, I ask unanimous consent that it be placed in the body of the RECORD at this point.

I also ask unanimous consent that the April 16, 1963, column of distinguished columnist Arthur Krock, of the New York Times, be placed in the RECORD immediately following the study of Dr. Nobleman. Columnist Krock takes appropriate notice of the importance of the Nobleman study.

There being no objection, the study and column were ordered to be printed in the RECORD, as follows:

SENATE COMMITTEE ON GOVERNMENT OPERATIONS,
April 3, 1963.

Staff Memorandum No. 88-1-27.

Subject: Authority of the Senate to originate appropriation bills.

During the hearings on S. 537, to provide for more effective evaluation of the fiscal requirements of the executive agencies of the Government of the United States, held on March 20, 1963, reference was made to the position of some Members of the House of Representatives that this bill, which would establish a Joint Committee on the Budget, might in some manner, infringe on alleged constitutional prerogatives of the House of Representatives to originate appropriation bills. Taking note of this issue, the chairman directed the staff to prepare a summary and analysis of the debates and actions of the Constitutional Convention of 1787, with particular reference to the authority of the Senate to originate appropriation measures.

Since the birth of the Republic, a controversy has existed as to whether article I, section 7, clause 1, on the Constitution of the United States vested in the House of Representatives the exclusive authority to originate appropriation measures.

Article I, section 7, clause 1 provides: "All bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills."

Although no mention is made of appropriations in this clause, the House of Representatives has, during the entire course of the history of the Nation, frequently asserted the position that this clause conferred upon it the exclusive authority to originate appropriation measures. The Senate has, from time to time, contested this position, contending that it has equal authority to originate such bills. However, for the most part, the Senate has acquiesced in the position of the House and, as a matter of practice and procedure, all appropriation measures do originate in the House of Representatives. This, however, is a matter of practice and not of constitutional right.

At this point, it may be stated unequivocally that there is nothing either in the language of the Constitution or in the debates of the delegates to the Constitutional Convention of 1787 which, in any way, lends support to the position of the House. On the contrary, the evidence is abundantly clear that various attempts in the Constitutional Convention to vest in the House of Representatives the exclusive authority to originate appropriation bills were defeated on several occasions, following extensive debate and discussion.

This position is supported conclusively by a statement of George Mason, delegate from Virginia, author of the Virginia Declaration of Rights, member of the Continental Congress, and one of the three men who refused to sign the completed Constitution. Mason, who participated actively in the debates, having spoken 136 times, was unalterably opposed to vesting any authority over either revenue or appropriation measures in the Senate. In assigning his reasons for refusing to sign the Constitution, he said, "The Senate have the power of altering all money-bills, and of originating appropriations of money * * * although they are not representatives of the people or amenable to them."[1]

Supporting data will be found in the debates and actions of the Constitutional Convention, as reported by James Madison and reprinted in (1) Elliott, "Debates on the Adoption of the Federal Constitution" (rev. ed., Philadelphia, 1861), vol. 5; (2) Farrand, "The Records of the Federal Convention of 1787" (New Haven, 1911), vols. I, II and III; (3) "Documents Illustrative of the Formation of the American States," House Document No. 398, 69th Congress (1927); and the following materials, all of which have been carefully analyzed: A report of the House Committee on the Judiciary entitled "Power of the Senate To Originate Appropriation Bills" (H. Rept. 147, 46th Cong., 3d. sess., 1881); a comprehensive article, entitled, "History of the Formation of the Constitution," by John A. Kasson, President of the Constitutional Centennial Commission, contained in the "History of the Celebration of the 100th Anniversary of the Promulgation of the Constitution of the United States" (Philadelphia, 1889), volume I; W. W. Willoughby, "The Constitutional Law of the United States" (2d ed., 1929), volume II; a memorandum submitted by Representative Robert McClory, based upon Charles Warren's "The Making of the Constitution" (Boston, 1937); a monograph, entitled, "Creation of the Senate," published as Senate Document No. 45, 75th Congress; and the testimony of Mr. Lucius Wilmerding, authority on the Federal spending power. See also Selko, "The Federal Financial System" (Brookings Institution, 1940). The report of the House committee was published in the CONGRESSIONAL RECORD, daily edition, July 9, 1962, pages 12016, ff. and was also inserted in the appendix to the record of the hearings on S. 537 as exhibit 1. The pertinent portion of the publication of the Constitutional Centennial Commission is attached hereto as exhibit 2. The materials submitted by Representative McClory and Mr. Wilmerding are found in the hearings on S. 537.

The balance of this memorandum will be devoted to a discussion of the arguments of the House of Representatives and evidence refuting these arguments, as contained in the Madison Journal and the other materials referred to above.

POSITION OF THE HOUSE OF REPRESENTATIVES[2]

The position of the House of Representatives appears to be based upon (1) the practice of the English Parliament at the time of the adoption of the Constitution, under which the lower House, the House of Commons, exercised full and complete control over all money bills, both appropriation and revenue-raising or tax bills; (2) the terminology of the period, under which the terms "money bills" and "bills for raising revenue" allegedly referred to and included appropriation bills; and (3) the alleged intention of the Constitutional Convention to retain authority over all financial matters in the House closest to the people.

DEBATES AND ACTIONS OF THE CONSTITUTIONAL CONVENTION OF 1787

Analysis of the debates of the Constitutional Convention clearly refutes the position of the House of Representatives. An authoritative account and analysis of these debates, with special reference to the right of the Senate to originate appropriations, is found in an article, entitled, "History of the Formation of the Constitution," published in a two-volume work, entitled, "History of the Celebration of the 100th Anniversary of the Promulgation of the Constitution of the United States," under the direction and

[1] Elliott, "Debates on the Federal Constitution" (2d ed., Philadelphia, 1861), vol. I, p. 494; Ford, ed., "Pamphlets on the Constitution of the United States," New York, 1888, p. 329.

[2] See, Williams, "The Supply Bills," S. Doc. No. 872, 62d Cong., 1st sess., 1912; report of the House Committee on the Judiciary, "Minority Views," H. Rept. No. 147, 46th Cong., 3d sess., 1881, "Luce, Legislative Problems," Boston, 1935, pp. 391, ff.

authority of the Constitutional Centennial Commission in 1889, and referred to above.

The article in question was written by former Representative John A. Kasson, president of the Constitutional Centennial Commission, and a distinguished lawyer and scholar, who served six terms as a Member of the House of Representatives from Iowa. In addition, Mr. Kasson served as First Assistant Postmaster General in President Lincoln's Cabinet, as United Statcs minister to Austria-Hungary and Germany, and as U.S. member and representative at numerous international conferences and commission negotiations.

In a section of his article entitled "The Legislative Right to Originate Money Bills" (pp. 101–105), reprinted in full as exhibit 2 of this memorandum, Mr. Kasson reviewed the debates, discussions and votes of the delegates to the Convention, and demonstrated conclusively (1) that the delegates considered and rejected the practice of the English Parliament; (2) that they were fully aware of the distinction between revenue bills and appropriation bills; (3) that they refused to extend the exclusive power of the House of Representatives beyond bills to raise revenue; and (4) that they deliberately and expressly voted to vest in the Senate equal authority with the House over appropriation measures.

In the scheme of government, as originally approved in the Committee of the Whole, equal power to originate legislation was given to the two Houses of Congress by unanimous consent. On June 13, during consideration of the Virginia Resolutions, Gerry moved to insert the words, "except money bills," which shall originate in the first branch of the national legislature." Butler saw no reason for such discrimination: "We were always following the British Constitution, when the reason for it did not apply. There was no analogy between the House of Lords and the body (Senate) proposed to be established. If the Senate should be degraded by any such discriminations, the best men would be apt to decline serving in it in favor of the other branch." Madison observed "that the commentators on the British Constitution had not yet agreed on the reason of the restriction on the House of Lords in money bills. Certain it was there could be no similar reason in the case before us. The Senate would be the representatives of the people as well as the first branch. If they should have any dangerous influence over it, they would easily prevail on some Members of the latter to originate the bill they wished to be passed. As the Senate would be generally a more capable set of men, it would be wrong to disable them from any preparation of the business, especially of that which was most important, and in our Republic, worse prepared than any other." He concluded that if the proposal was to be advocated at all, it must be extended to amend'ng as well as originating money bills. Sherman stated, "We establish two branches in order to get more wisdom, which is particularly needed in the finance business. The Senate bcar their share of the taxes, and are also the representatives of the people." Pinckney said, "This distinction prevails in South Carolina, and has been a source of pernicious disputes between the two branches." The motion was then defeated by a vote of 7 to 3, and both Houses retained equal rights in all legislation.

Subsequently, during the debate on equality of State representation in the two Houses, it was urged by delegates from the larger States that questions of revenue ought to be determined by a proportional representation, otherwise, a minority of population, represented by a majority of States, might impose burdens on the majority of both wealth and population. This led to an offer by the small States that "all bills for raising or appropriating money * * * shall originate in the first branch of the legislature, and shall not be altered or amended by the second branch; and that no money shall be drawn from the Public Treasury but in pursuance of appropriations to be originated in the first branch." This offer was conditioned upon the acceptance of an equal vote in the Senate; and a committee, of which Gerry was chairman, so reported the plan on July 5. This plan was opposed by Madison, Gouverneur Morris, and Wilson, but the clause was adopted on July 6, by a vote of 5 to 3, with the understanding that it was still an open question. On July 16, following debate on the compromise as a whole, which included other matters, the plan was carried by a vote of 5 to 4, with the understanding that it was still an open question, and it went to the Committee of Detail, still unsupported by a majority of the States.

In its report on August 6, the Committee of Detail provided that "All bills for raising or appropriating money, snd for fixing the salaries of the officers of Government, shall originate in the House of Representatives, and shall not be altered or amended by the Senate. No money shall be drawn from the Public Treasury, but in pursuance of sppropriations that shall originate in the House of Representatives." In another section of the report, it was provided that "Each House shall possess the right of originating bills, except in the cases aforementioned."

When the Convention took this section up for debate, on August 8, Pinckney moved to strike it out, on the ground that it gave no advantage to the House of Representatives, and "if the Senate can be trusted with the many great powers proposed, it surely may be trusted with that of originating money bills." Gouverneur Morris said, "It is particularly proper that the Senate shall have the right of originating money bills. They will sit constantly, will consist of a smaller number, and will be able to prepare such bills with due correctness; and so as to prevent delay of business in the other House." Mason opposed Pinckney's motion to strike out the section stating that the purse strings should never be put into the hands of the Senate. Mercer thought that without this power the equality of votes in the Senate was rendered of no consequence. Madison also favored the motion, thinking the power to be of no consequence to the House and likely to involve the two branches in "injurious altercations." Mason, Butler, and Ellsworth opposed the motion, on the ground that it would add to the already too great powers of a Senate and promote an aristocracy. Thereafter, the Convention proceeded to vote to strike out the clause which vested exclusive power over revenue and appropriations in the House by a vote of 7 to 4.

On August 9, Randolph gave notice that he would move to reconsider this vote, stating that he thought it was not only "extremely objectionable", but also "as endangering the success of the plan." The plan he referred to was a part of the so-called Great Compromise of July 16, under which the right of the House to originate all revenue bills had been given as a concession to the lsrge States in return for equality of representation in the Senate for the small States.

Williamson said that his State of North Carolina "had agreed to equality in the Senate, merely in consideration that money bills should be confined to the other House, and he was surprised to see the smaller States forsaking the condition on which they had received their equality." Mason said that unless this power should be restored to the House, "he should, not from obstinacy, but from duty and conscience, oppose throughout the equality of representation in the Senate." Gouverneur Morris, on the other hand, considered the section relating to money bills as "intrinsically bad"; and Wilson said that the two large States of Pennsylvania and Virginia had uniformly voted against it.

On August 11, on a motion to reconsider the vote striking out the money bill clause, Randolph made an elaborate speech in support of vesting the power over money bills in the House. It will make the plan "more acceptable to the people because they will consider the Senate as the more aristocratic body and will expect the usual guards against its influence be provided according to the example in Great Britain." He thought also that the restraint of the Senate from amending was of particular importance and he proposed to limit the exclusive power to "bills for the purpose of revenue", to obviate objection to the term "raising money", which might happen incidentally, not allowing the Senate by amendment to either increase or diminish the same. Reconsideration was agreed to by a vote of 9 to 1.

On reconsideration, Randolph's motion, made on August 13, was in the following words: "Bills for raising money for the purpose of revenue, or for appropriating the same, shall originate in the House of Representatives; and shall not be so amended or altered by the Senate as to increase or diminish the sum to be raised, or change the mode of levying it, or the objects of its appropriation."

This motion led to a heated debate. Mason supported Randolph fully. It was opposed, however, by Wilson, who said, "it would be a source of perpetual contentions where there was no mediator to decide them. The President here could not, like the executive in England, interpose by a prorogation or dissolution. This restriction had been found pregnant with altercation in every State where the Constitution (State) had established it. The House of Representatives will insert other things in money bills, snd by making them conditions of each other, destroy the deliberate liberty of the Senate. * * * With regard to the purse strings (referred to by Mason), it was to be observed that the purse was to have two strings, one of which was in the hands of the House of Representatives, the other in those of the Senste. Both Houses must concur in untying, and of what importance could it be which untied first, which last. He could not conceive it to be any objection to the Senate's preparing the bills, that they would have leisure for that purpose and would be in the habits of business (referring again to Mason's remarks). War, Commerce, and Revenue were the great objects of the General Government. All of them are connected with money. The restriction in favor of the House of Representatives would exclude the Senate from originating any important bills whatever."

Gerry stated that "taxation and representation are strongly associated in the minds of the people, and they will not agree that any but their immediate representatives shall meddle with their purses. In short the acceptance of the plan will inevitably fail, if the Senate be not restrained from originating money bills." Madison thought that if Randolph's substitute is to be adopted "it would be proper to allow the Senate at least so to amend as to diminish the sum to be raised. Why should they be restrained from checking the extravagance of the other House. One of the greatest evils incident to republican government was the spirit of contention and faction. The proposed substitute, which in some respects lessened the objections against the section, had a contrary effect with respect to this particular. It laid a foundation for new difficulties and disputes between the two Houses. The word 'revenue' was ambiguous. In many acts, particularly in the regulation of trade, the object would be twofold. The

raising of revenue would be one of them. How could it be determined which was the primary or predominant one; or whether it was necessary that revenue should be the sole object, in exclusion of other incidental effects." Madison then went on to show that it is difficult to determine whether a bill which was sent to the House by the Senate was or was not an amendment or alteration of a House revenue bill. He noted further the difficulties in determining what was an amendment or alteration, and what was the meaning of the words "increase or diminish." Continuing, he stated, "If the right to originate be vested exclusively in the House of Representatives, either the Senate must yield against its judgment to that of the House, in which case the utility of the check will be lost—or the Senate will be inflexible and the House of Representatives must adapt its money bill to the views of the Senate, in which case, the exclusive right will be of no avail."

After Dickinson and Randolph had defended further Randolph's motion, Rutledge stated that "he would prefer giving the exclusive right to the Senate, if it was to be given exclusively at all. The Senate being more conversant in business, and having more leisure, will digest the bills much better, and as they are to have no effect until examined and approved by the House of Representatives, there can be no possible danger. * * * The experiment in South Carolina, where the Senate cannot originate or amend money bills, has shown that it answers no good purpose; and produces the very bad one of continually dividing and heating the two Houses. Sometimes, indeed, if the matter of the amendment of the Senate is passing to the other House they wink at the encroachment; if it be displeasing, then the Constitution is appealed to. Every session is distracted by altercations on this subject. The practice now becoming frequent is for the Senate not to make formal amendments; but to send down a schedule of the alterations which will procure the bill their assent." Carroll said, "the most ingenious men in Maryland are puzzled to define the case of money bills, or explain the Constitution on that point; though it seemed to be worded with all possible plainness and precision. It is a source of continual difficulty and squabble between the two Houses."

At the close of this debate, three votes were taken. First, on the exclusive right in the first House to originate money bills; defeated, 4 to 7; second, on originating by the first House and amending by the Senate: defeated, 4 to 7; and third, on the clause "No money shall be drawn from the Public Treasury, but in pursuance of appropriations that shall originate in th House of Representatives"; defeated, 10 to 1.

Warren, in commenting on the action taken by the Convention on August 13 notes that "the Convention adhered to its vote of August 8; and thus a victory was again scored by the supporters of the power of the Senate."[3] Kasson observes that "here, for the first time, appears a very strong conviction of the Convention that a distinction should be made between bills for raising revenue and bills for appropriating money."[4]

On August 14, Williamson referred to the money bill section as dead, but "its ghost he was afraid would notwithstanding haunt us. It had been a matter of conscience with him, to insist upon it as long as there was hope of retaining it. He had swallowed the vote of rejection with reluctance. He could not digest it. All that was said on the other side was that the restriction was not convenient. We have now got a House of Lords which is to originate money bills."

On August 15, Strong proposed the following amendment: "Each House shall possess the right of originating all bills, except bills for raising money for the purposes of revenue, or for appropriating the same and for fixing the salaries of the officers of the Government which shall originate in the House of Representatives; but the Senate may propose or concur with amendments as in other cases." Mason seconded Strong's motion, stating that "He was extremely earnest to take this power from the Senate, who he said could already sell the whole country by means of Treaties." Gorham said the amendment was of great importance. "The Senate will first acquire the habit of preparing money bills, and then the practice will grow into an exclusive right of preparing them." Gouverneur Morris opposed it as unnecessary and inconvenient. Williamson said, "Some think this restriction on the Senate essential to liberty, others think it of no importance. Why should not the former be indulged? He was for efficient and stable Government but many would not strengthen the Senate if not restricted in the case of money bills. The friends of the Senate would therefore lose more than they would gain by refusing to gratify the other side." He thereupon moved to postpone the subject until the powers of the Senate had been reviewed, and further action was then postponed.

On September 5, the Committee of Eleven, to which had been referred certain portions of the proposed Constitution upon which action had been postponed, filed a report recommending, among other things, that "All bills for raising revenue shall originate in the House of Representatives, and shall be subject to alterations and amendments by the Senate; no money shall be drawn from the treasury, but in consequence of appropriations made by law."

Gouverneur Morris moved to postpone consideration, noting that "it had been agreed to in the committee on the ground of compromise, and he should feel himself at liberty to dissent to it, if on the whole he should not be satisfied with certain other parts (of the report) to be settled." Sherman "was for giving immediate ease to those who looked on this clause as of great moment, and for trusting to their concurrence in other proper measures." Morris' motion carried by a vote of 9 to 2 and the matter was postponed.

It should be noted, at this point, that here, for the first time, we have an official recommendation from a special committee, directed to report with respect to matters which had been postponed, which retains in the House exclusive authority to originate measures for raising revenue, while authorizing the Senate to alter or amend such measures, but which eliminates the exclusive power in the House to originate appropriations. It is perfectly clear, from the previous debate, that the elimination of the exclusive power in the House to originate appropriation bills was not accidental, inadvertant, or due to any lack of understanding on the part of the delegates as to the difference between bills to raise revenue and bills to appropriate funds. In fact, the vote on August 13, previously described, makes it quite clear that the distinction between revenue and appropriation measures was well understood. What is reflected in the proposal of the special committee is an attempt to reach a compromise which would placate those who wanted to see more power vested in the Senate and who had opposed the origination of revenue measures in the House exclusively.

Commenting on this proposal of the special committee, Warren states that "this new compromise satisfied some of the delegates from the smaller States and some from the larger States, who had hitherto opposed the origination of revenue bills in the House; * * *".[5]

On September 8, the postponed proposed section was again considered. After adopting an amendment to the first clause which incorporated the language of the Massachusetts constitution, the section was adopted by a vote of 9 to 2. As amended and adopted, it reads as follows: "All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments, as in other bills. No money shall be drawn from the Treasury but in consequence of appropriations made by law."

On the same day, a committee of five was appointed "to revise the style of and arrange the articles which had been agreed to * * *", referred to as the Committee on Style and Arrangement.

On September 12, the Committee on Style and Arrangement made its report on a final and revised draft of the Constitution. Section 7 of this final draft contained the provision: "All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments as on other bills." The last clause of the version adopted on September 8, forbidding money to be drawn from the Treasury except in consequence of appropriations made by law, had been removed from section 7 and appeared as clause 6 of section 9.

SUMMARY OF DEBATES IN THE CONSTITUTIONAL CONVENTION

Summarizing the debates, it appears (1) that originally each House was to have full and equal authority to originate all bills; (2) an attempt to except money bills and require them to originate in the House of Representatives was rejected; (3) as a result of a compromise between delegates from the small and large States, all States were given an equal vote in the Senate, in return for vesting in the House of Representatives exclusive power to originate both revenue and appropriation measures, and this was tentatively approved on two occasions; (4) subsequently, a provision to vest exclusive authority in the House over both revenue and appropriation bills was proposed by the Committee on Detail and rejected on two occasions; (5) this rejection was in three parts; one rejected the exclusive authority in the House to originate money bills; the second rejected the exclusive authority in the House to originate, with amendment by the Senate; and the third rejected exclusive origination of appropriation measures in the House of Representatives; (6) subsequently, a special committee, in an attempt at conciliation, recommended that the House have exclusive authority to originate revenue measures, with amendment by the Senate, and exclusive authority to originate appropriation measures was dropped; and (7) finally, the Convention adopted the language now contained in the Constitution, except that the clause requiring appropriations made by law prior to drawing money from the Treasury was moved to another section of the Constitution, probably in order to avoid the confusion and misunderstanding generated by the earlier language, and as a matter of style.

Kasson, commenting on the final product, says, "It thus appears by express votes the Convention refused to extend the exclusive power of the House beyond bills for raising revenue, and by express vote decided to leave in the Senate an equal power to origi-

[3] Warren, "The Making of the Constitution" (Boston, 1937), p. 435.

[4] Kasson, "History of the Formation of the Constitution," in "History of the Celebration of the One Hundredth Anniversary of the Promulgation of the Constitution of the United States" (Phila., 1889), p. 104.

[5] Warren, "The Making of the Constitution," op. cit., p. 670.

nate bills making appropriations of public money * * *."[6]

REPORT OF HOUSE COMMITTEE ON THE JUDICIARY, 46TH CONGRESS (1880)

Further substantiation for this view is found in the report of the House Committee on the Judiciary, made in 1881, referred to above (H. Rept. 147, 46th Cong., 3d sess.). It appears that a Senate bill, authorizing the Secretary of the Treasury to purchase certain land, and further authorizing the appropriating of funds therefor, had passed the Senate and was referred to the appropriate House committee which reported it favorably. Having determined that the matter involved the making of an appropriation, it was referred to the House Committee on the Judiciary with instructions to inquire into the right of the Senate under the Constitution to originate appropriation bills. This committee made a searching examination of the entire question and concluded that the Senate had such authority and that the power to originate appropriation bills is not exclusive in the House of Representatives.

After reviewing the British Parliamentary practice at the time of Constitutional Convention, the House committee observed, "* * * if they (the Founding Fathers) had intended to secure to the House the sole right to originate appropriation bills * * * it is but reasonable to suppose that they would have done so in perfectly plain and unequivocal terms."

Following an examination of a portion of the debates in the Constitutional Convention, the House committee stated:

"From this brief summary it will be seen that the proposition was more than once presented to the Convention to vest in the House of Representatives the exclusive privilege of originating 'all money bills' co nomine, which was so often rejected. It would seem obvious, therefore, that the framers of the Constitution did not intend that the expression 'bills for raising revenue', as employed by them, should be taken as the equivalent of that term as it was understood in English parliamentary practice; for, if they had so intended, they would surely have used that term itself, which had already received a fixed and definite signification from long and familiar usage, instead of the one they chose to employ."

Thereafter, the House committee observed that it could not be said that the framers of the Constitution acted under any misapprehension or want of proper deliberation. Not only did they specifically reject language which would have vested in the House of Representatives the exclusive privilege of originating appropriation bills, but

"No provision in the entire Constitution was more elaborately discussed or more carefully considered. The policy of investing the House of Representatives with the exclusive privileges exercised by the English House of Commons in relation to 'money bills' was persistently and ably urged by such distinguished and patriotic statesmen as George Mason, Elbridge Gerry, and Benjamin Franklin; and the impropriety of making any discrimination whatever between the two Houses as to their power to originate any bills was forcibly presented by Madison, Gouverneur Morris, Oliver Ellsworth, James Wilson, and Roger Sherman.

Continuing, the House committee states:

"To say that the illustrious men who composed the Federal Convention were incapable of declaring in clear and unmistakable language that the House of Representatives should have the sole right to originate appropriation bills, if such had been their intention, would be an insult to their intelligence, which, in view of the precise and perspicuous terms used in the resolution reported by Mr. Gerry, the substitute offered by Mr. Randolph, and the amendment proposed by Mr. Strong, could only stultify the person who might hazard such an insinuation; and it would be no less an imputation upon their integrity and candor, as well as a gross abuse of construction, to suppose that they intended to be understood as meaning precisely what they repeatedly refused to say in plain words, especially when such a meaning cannot be inferred by any possibility from the language they actually employed, if that language is taken according to its natural and ordinary import."

The House committee came to the conclusion that it was never the intention of the framers of the Constitution to withhold the power of originating appropriation bills from the Senate, and that this was clearly shown from the language used in the instrument and the circumstances under which that language was employed.

Concerning the argument that usage and customs should govern, the committee said:

"* * * if the Senate was ever invested with that power by the Constitution, it cannot be said to have lost it by nonuser. Fortunately for us, that is not the way in which our constitutional provisions are changed, nor can they be altered by mere parliamentary practice. They must remain in the plain words in which they are written until amended by the concurrent votes of two-thirds of each branch of Congress and the legislatures of three-fourths of all the States in the Union, and while they remain they must be construed according to the simple and well settled rules of interpretation applicable to all other written language

"If the mere practice of the two Houses or of either of them can be said to affect in any way a clear constitutional principle, instances in which the House has passed, without objection, appropriation bills which have originated in the Senate, might be adduced in sufficient numbers to fill a volume."

In concluding its report, the committee stated:

"With the policy of such a provision your committee has nothing to do. That was a matter to be considered and determined by the convention which framed the Constitution and the States which ratified it. And whether they acted wisely or unwisely in that regard cannot alter the fact that there is nothing in the language of the Constitution to indicate an intention on their part to withhold from the Senate the power to originate bills for the appropriation of money or that they repeatedly rejected a proposition to confine that privilege to the House of Representatives, although presented in the most emphatic and unequivocal terms. Believing, therefore, from the plain letter of the Constitution, as well as from all the circumstances surrounding the adoption of the provision in question, that the Senate had the clear right to originate the bill, they report it back to the House, with the recommendation that it be referred to the Committee on Appropriations, and that the following resolution be adopted:

"*Resolved*, That the Senate had the constitutional power to originate the bill referred, and that the power to originate bills appropriating money from the Treasury of the United States is not exclusive in the House of Representatives."

This report, which was accompanied by minority views, was recommitted. The minority views contained the usual arguments advanced in support of the contention that the House of Representatives has exclusive power to originate appropriation bills.

VIEWS OF COMMENTATORS AND THE SUPREME COURT OF THE UNITED STATES

The precise question of the right of the Senate to originate appropriation bills has never been passed upon directly by the courts. However, it has been the subject of comment by several commentators and has been treated indirectly in several decisions of the U.S. Supreme Court.

Mr. Justice Story, writing in 1833, in his famous "Commentaries on the Constitution of the United States," stated: [7]

"* * * What bills are properly 'bills for raising revenue,' in the sense of the Constitution, has been a matter of some discussion. A learned commentator supposes that every bill which indirectly or consequent may raise revenue is, within the sense of the Constitution, a revenue bill. He therefore thinks that the bills for establishing the post office and the mint, and regulating the value of foreign coin belong to this class, and ought not to have originated (as in fact they did) in the Senate. But the practical construction of the Constitution has been against his opinion. And, indeed, the history of the origin of the power already suggested abundantly proves that it has been confined to bills to levy taxes in the strict sense of the words, and has not been understood to extend to bills for other purposes, which may incidentally create revenue. * * *"

More recently, an equally eminent authority on the Constitution, W. W. Willoughby, in his definitive work, "The Constitutional Law of the United States" stated: [8]

"The Constitution provides that 'all bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.'

"This provision has given rise to frequent controversies between the two Houses of Congress, but has but seldom been passed up by the courts. No formal definition of a revenue measure has been given by the Supreme Court, but in *Twin City National Bank* v. *Nebeker*, the court, in effect, held that a bill, the primary purpose of which is not the raising of revenue, is not a measure that must originate in the House, even though, incidentally, a revenue will be derived by the United States from its operation."

Concerning appropriations acts, Mr. Willoughby stated: [9]

"It would seem that the Senate has full power to originate measures appropriating money from the Federal Treasury.

"This right has at times been denied by certain Members of the House, but the House has not itself formally adopted this negative view."

In *Twin City Bank* v. *Nebeker*,[10] the Supreme Court of the United States upheld the validity of a statute providing a national currency secured by a pledge of bonds of the United States and imposing a tax on the notes in circulation of the banking associations organized under the statute, in furtherance of that object and to meet the expenses attending the execution of the act. It was contended that since the act imposed a tax, it was a revenue raising measure; and that since the amendment which imposed the tax originated in the Senate, it was void. The Court held that this was not a revenue bill "which the Constitution declares must originate in the House of Representatives."

In disposing of this contention, Mr. Justice Harlan (202–3) stated:

"Mr. Justice Story has well said that the practical construction of the Constitution and the history and origin of the constitutional provision in question proves that revenue bills are those that levy taxes in the strict sense of the word, and are not bills for other purposes which may incidentally create revenue. * * *"

[6] Kassan, "History of the Formation of the Constitution, op. cit., supra, p. 105.

[7] Vol. 2, pp. 342–343.

[8] (2d ed., 1929), vol. II, p. 656.

[9] Ibid., p. 657.

[10] 167 U.S. 196 (1897).

BASES FOR THE POSITION OF THE HOUSE OF REPRESENTATIVES

The position of some Members of the House of Representatives, that the Constitution vests in that House exclusive authority to originate appropriation bills, appears to have received its principal support from Asher Hinds and Representative CLARENCE CANNON, both former House Parliamentarians, and a considerable amount of material on the subject is found in "Hinds' and Cannon's Precedents." Additional material is found in Luce's "Legislative Problems," and in the minority views attached to the report of the House Committee on the Judiciary (H. Rept. No. 147, 46th Cong.), referred to above. However, the major work purporting to support this position is found in an article by former Senator John Sharp Williams, written in 1912 and published as Senate Document No. 872 (62d Cong., 1912).

In this article, Mr. Williams, after reviewing briefly the debates in the convention, arrives at the events of September 8, 1787. Noting the adoption by a vote of 9 to 2 of the language "All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments, as in other bills. No money shall be drawn from the Treasury but in consequence of appropriations made by law," he says, "no discussion. Evidently nobody thought that it made a difference from previous drafts. Why? Because the phrase 'raising revenue' was equivalent to the phrase 'raising money and appropriating the same'."

In coming to this conclusion, Mr. Williams ignored completely the fact that on two occasions a provision by the Committee on Detail to vest exclusive authority over both revenue and appropriation bills was rejected. Furthermore, at the time of the second rejection, a vote was taken on the following language: "No money shall be drawn from the Public Treasury, but in pursuance of appropriations which shall originate in the House of Representatives"; and it was defeated by a vote of 10 to 1.

How Mr. Williams was able to conclude after that action and the debate surrounding it that the phrase "'raising revenue' was equivalent to the phrase 'raising money and appropriating the same'" is not readily apparent and is merely based upon his own personal views and interpretations, rather than on historical facts and events.

Mr. Williams also made much of the fact that the final draft, which omitted any reference to "appropriations," was the work of the "Committee of Revision of Style," concluding that it "seems still evident that to 'raise revenue' meant to raise money and appropriate it." He made no reference to the fact that this committee moved the last clause of the version adopted on September 8, dealing with appropriations, from section 7 of the final draft to section 9 of the final draft. It is certainly just as valid to assume that the committee took this action in order to separate, once and for all, the appropriation provision from the revenue provision, in order to avoid the conflict and misunderstanding which existed throughout a considerable portion of the debate. Mr. Williams' implication, that the omission of any reference to "appropriations" was purely one of style and arrangement, certainly finds no justification in the facts reviewed, and must be treated as mere conjecture on his part.

Mr. Williams proceeded to review the debates in some of the State conventions on the ratification of the Constitution. His references to the language used, however, are inconclusive, since all or most of them are to "money bills," a term which, although used in the debate by the framers, was later discarded in favor of the more precise term—"bills to raise revenue," and "appropriations." By tortured interpretations of the terms, "money bills," "revenue bills," and "supply bills," he attempts to show without any noticeable basis, that they really mean "appropriation bills."

Mr. Williams states further that "if you will read the proceedings of the Constitutional Convention at Philadelphia very carefully, you will find that the whole argument there was whether the Senate should or should not have the right to amend. There never was one moment spent in discussion as to whether the House should or should not have the right to originate."

It is apparent that Mr. Williams did not read the debates with the care he requested of others. As early as June 13, 1787, when Gerry moved to change the equal right in both Houses to originate all legislation, so as to except money bills "which shall originate in the House of Representatives," Butler, Madison, Sherman, and Pinckney took issue with him. Madison specifically observed that "the Senate would be the representatives of the people as well as the first branch," and "as the Senate would be generally a more capable set of men, it would be wrong to exclude them from any preparation of the business, especially of that which was important, * * *." Sherman said, "We establish two branches in order to get more wisdom, which is particularly needed in the finance business. The Senate bear their share of the taxes and are also repressntatives of the people." Pinckney noted that this distinction in South Carolina has been a source of "pernicious disputes between the two branches." After the debate, Gerry's motion was defeated by a vote of 7 to 2.

Subsequently, on August 6, the Committee on Detail, in its report, provided for the origination in the House of Representatives of "all bills for raising or appropriating money * * *." In the debate on this provision on August 8, Gouverneur Morris said, "it is particularly proper that the Senate shall have the right of originating money bills. They will sit constantly, will consist of a smaller number, and will be able to prepare such bills with the due correctness; and so as to prevent delay in the other House." Following further debate, the provision was rejected by a vote of 7 to 4. In further debate, several days later, Wilson said that "the purse was to have two strings, one of which was in the hands of the House of Representatives, the other in the Senate. Both Houses must concur in untying, and of what importance would it be which untied first, which last." He could not conceive "it to be any objection to the Senate's preparing the bills," and "the restriction in favor of the House of Representatives would exclude the Senate from originating any important bills whatever."

In the light of the foregoing, it certainly cannot be said with any degree of accuracy, that "there never was one moment spent in discussion as to whether the House should or should not have the right to originate."

Finally, we have the clear statement of George Mason, a delegate from Virginia, who gave, as one of his reasons for refusing to sign the Constitution, the fact that "the Senate shall have the power of altering all money bills, and of originating appropriations of money." [11]

CONCLUSIONS

As stated at the outset of this study, an examination of the debates of the framers of the Constitution and of the principal commentators and authorities on the subject reveals, beyond any doubt, that the Senate has constitutional authority to originate appropriation bills. This conclusion is based upon the following findings:

1. The language of the Constitution itself makes it perfectly plain that the exclusive authority of the House of Representatives refers only to "bills for raising revenue" which term means "levying taxes." If the delegates to the Convention had desired to vest sole authority over appropriations in the House of Representatives, it may be assumed, in the light of their intellectual capacities and stature, that they would have done so in plain and unequivocal terms, particularly in view of the fact that attempts to confine that authority to the House were rejected repeatedly. This position is further supported by the refusal of Delegate George Mason to sign the Constitution because it gave the Senate power to originate appropriations, quoted in the preceding paragraph.

2. The practice of the English Parliament, at the time of the Constitutional Convention, under which the House of Commons controlled both revenue-raising and appropriation bills, was well known and understood by the delegates. The question of vesting the same powers in the House of Representatives was thoroughly debated and was ultimately rejected as inapplicable to the situation at hand, since the Senate bore no resemblance whatever to the hereditary House of Lords.

3. The framers of the Constitution deliberately discarded the term "money bills", used in English parliamentary practice, because of the confusion generated by this term. Furthermore, they understood fully the distinction between revenue-raising measures and appropriation measures, and, at no time was it intended that the term "bills for raising revenue" was to include bills for appropriating money.

4. Originally, each House was given equal authority to originate all bills, and an attempt to except money bills and require them to originate in the House of Representatives was rejected.

5. As the result of a compromise between the small and large States, all States were given an equal vote in the Senate in return for vesting in the House of Representatives exclusive power to originate both revenue and appropriation measures, and this was tentatively approved on two occasions.

6. Subsequently, a provision to vest exclusive authority in the House over both revenue and appropriation measures was proposed and rejected on two occasions. This rejection was in three parts: one vote rejected the exclusive authority in the House to originate money bills; the second rejected the exclusive authority in the House to originate, with amendment by the Senate; and the third rejected exclusive origination of appropriation measures in the House of Representatives.

7. Having reached an impasse on this question, a special committee, in an attempt at conciliation, recommended that the House have exclusive authority to originate revenue measures, with amendment by the Senate, and exclusive authority to originate appropriation measures was dropped, in order to placate those delegates who resented the attempt to exclude the Senate from a matter of such importance as appropriations.

8. The Convention finally adopted the language now contained in the Constitution, except that the clause requiring appropriation made by law prior to drawing money from the Treasury was moved to another section by the Committee on Style and Arrangement. It is obvious that this action could not have been inadvertent, since the committee in question had no authority to make substantive changes. Therefore, their action in dropping any reference to appropriation measures from article 1, section 7, clause 1, was done deliberately in order to carry out the desires of a majority of the delegates, and to eliminate any possible confusion which had been generated by the earlier language. Had this action been tak-

[11] See, supra, note 1.

panded to include the training of students in every form of education to the very limits of their capabilities. We, therefore feel that the legislation here proposed will not conflict with the objectives of the National Defense Education Act of 1958 but will supplement the provisions of that law. It will encourage individuals to volunteer for service so that they can pay for their education by serving their country. This legislation will clearly and unmistakably serve as a notice to all our youth that their obligation to serve their country is not a one-way proposition—that the Federal Government acknowledges a special obligation for those who serve in the Armed Forces over and above any obligation we might have to those who never perform any duty for their country.

There are many other arguments against this legislation and I am sure you gentlemen have already heard many of them. I will not take any more of your time to point out the invalidity of them. I am sure in your consideration of this bill you will clearly see that its objectives are founded on a careful analysis of the benefits derived by the Nation from the GI bill of rights.

IMPORTANCE OF KEY PROVISIONS OF GI BILL

We wish to comment on certain key provisions of the bill.

1. The educational benefits are particularly valuable since they permit a wide range of choice by the individual veteran among the various educational opportunities that are most likely to be of value to him. These opportunities range from advanced professional and technical study to on-the-job training in applied skills. It is essential that we continue to allow the veteran to make his own choice of vocation.

2. The proposed legislation, in the judgment of nearly all of us in higher education, should provide for the payment of benefits directly to the individual veteran. The veteran then attends the school or college of his choice. The experienced educators across the country are so uniformly in favor of this procedure that I want to endorse strongly a provision for direct payment to the veteran.

We suggest that any bill passed by this committee should include the above-outlined principles.

CONCLUSION

In summary, Mr. Chairman, we see the following benefits in the approval of an educational assistance program to post-Korean veterans:

1. Inequity of educational opportunities for veterans will be corrected.

2. The Nation will be able to repay those who sacrificed the most in a way which will be beneficial to both the individual and society.

3. Educational opportunities will result in additional scientists, engineers, technicians, and other professional people thus raising the skilled and technical levels in America, thereby strengthening the defense of our Nation.

4. Opportunities for individuals to make their own choices in education assure an educational balance with the total needs of our society.

5. Those who will benefit under this program will not only aid their society by their increased educational training, but will naturally aid the coffers of the Treasury.

6. Enlistments in the military service will increase too, with greater purpose and planning on the part of volunteers.

7. Skills and ability which otherwise may be lost or not used will be developed at every level of education.

8. Production increases can be expected through increased enrollments in programs of vocational education.

9. Labor markets will be relieved of nontrained and semitrained applicants.

10. In addition to raising the standard of living, preparing our young people for automation by developing their technical, scientific, and educational skills, and reducing the number of unskilled, we are providing for an enlightened and educated citizenry.

Before closing my testimony, I would like to say on behalf of the private business schools of America, that we will rededicate ourselves to do an even better job than we have done in the past in turning out trained personnel who will meet the needs of commerce, industry, Government and national defense.

We also wish to express the appreciation of our group for the privilege of appearing before this committee.

Mr. MANSFIELD. Mr. President, is there further morning business?

The VICE PRESIDENT. Is there further morning business? If not, morning business is closed.

COMMUNICATIONS SATELLITE CORP.

The Senate resumed the consideration of the nominations of incorporators of the Communications Satellite Corp.

Mr. MANSFIELD. Mr. President, what is the pending business?

The VICE PRESIDENT. The question is, Will the Senate advise and consent to the nominations, en bloc, of the incorporators of the Communications Satellite Corp.?

Mr. MANSFIELD. Mr. President, is the Senate in executive session?

The VICE PRESIDENT. It is.

Mr. MANSFIELD. I am about to propound a unanimous-consent request. It has been cleared with the distinguished minority leader, the Senator from Illinois [Mr. DIRKSEN], with the distinguished Senator from Rhode Island [Mr. PASTORE], and the distinguished Senator from New Mexico [Mr. ANDERSON], who favor the confirmation of the nominations; and with the distinguished junior Senator from Tennessee [Mr. GORE], the distinguished senior Senator from Tennessee [Mr. KEFAUVER], the distinguished senior Senator from Oregon [Mr. MORSE], and other Senators who oppose the confirmation of the nominations. I believe that at this time we have perhaps touched all bases.

I ask unanimous consent that on the point of order to be made by the distinguished senior Senator from Oregon [Mr. MORSE], and following the conclusion of a forthcoming quorum call, 40 minutes be allocated to the consideration of the point of order, 20 minutes to be controlled by the distinguished Senator from Rhode Island [Mr. PASTORE], and 20 minutes to be controlled by the distinguished Senator from Oregon [Mr. MORSE].

The limitation of debate will not become effective until after the conclusion of a live quorum call, at which time the Senator from Oregon will obtain the floor and make his point of order. At that time the limitation of debate will start.

The VICE PRESIDENT. Does the Chair correctly understand that the Senator from Oregon anticipates raising a constitutional question?

Mr. MANSFIELD. That is correct.

The VICE PRESIDENT. Is there objection to the request of the Senator from Montana?

Mr. JAVITS. Mr. President, may we know the request?

Mr. MANSFIELD. I have just made the request that the Senate agree to a limitation of debate following the conclusion of a live quorum call. The Senator from Oregon will then make his point of order, and at that time the limitation of debate will begin.

Mr. JAVITS. There would be a limitation of 40 minutes?

Mr. MANSFIELD. The Senator is correct.

The VICE PRESIDENT. Did the Chair correctly understand the Senator from Montana to say that the Senator from Oregon intends to raise a question as to whether the Senate has the authority under the Constitution to confirm the nominations?

Mr. MANSFIELD. That is correct.

The VICE PRESIDENT. That is a constitutional question.

Mr. MANSFIELD. I accept the correction. The RECORD is now clear.

The VICE PRESIDENT. Is there objection to the unanimous-consent request of the Senator from Montana? The Chair hears none, and it is so ordered.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum, and I ask that the attachés notify Senators that it will be a live quorum.

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk called the roll and the following Senators answered to their names:

[No. 62 Ex.]

Aiken	Goldwater	Miller
Allott	Gore	Monroney
Anderson	Gruening	Morse
Bartlett	Hartke	Morton
Bayh	Hickenlooper	Moss
Beall	Hill	Mundt
Bennett	Holland	Muskie
Boggs	Hruska	Nelson
Brewster	Inouye	Neuberger
Burdick	Jackson	Pastore
Byrd, Va.	Javits	Pearson
Byrd, W. Va.	Johnston	Pell
Cannon	Jordan, N.C.	Prouty
Carlson	Jordan, Idaho	Proxmire
Case	Keating	Ribicoff
Church	Kefauver	Robertson
Clark	Kennedy	Russell
Cooper	Kuchel	Saltonstall
Cotton	Lausche	Scott
Curtis	Long, Mo.	Simpson
Dirksen	Long, La.	Smith
Dodd	Mansfield	Sparkman
Dominick	McCarthy	Stennis
Douglas	McClellan	Talmadge
Eastland	McGee	Thurmond
Edmondson	McGovern	Tower
Ellender	McIntyre	Williams, Del.
Ervin	McNamara	Yarborough
Fong	Mechem	Young, N. Dak.
Fulbright	Metcalf	Young, Ohio

Mr. MANSFIELD. I announce that the Senator from Nevada [Mr. BIBLE], the Senator from California [Mr. ENGLE], the Senator from Minnesota [Mr. HUMPHREY], the Senator from Washington [Mr. MAGNUSON], the Senator from Florida [Mr. SMATHERS], the Senator from Missouri [Mr. SYMINGTON], the Senator from New Jersey [Mr. WILLIAMS], and the Senator from Michigan [Mr. HART] are absent on official business.

I further announce that the Senator from West Virginia [Mr. RANDOLPH] is necessarily absent.

The VICE PRESIDENT. A quorum is present.

Mr. MORSE. Mr. President, before I raise the point of order, in behalf of myself and the Senator from Wisconsin [Mr. NELSON], which I know every Senator expects me to make, I ask for the yeas and nays on the point of order.

The yeas and nays were ordered.

Mr. MORSE. Mr. President, speaking now under the unanimous-consent agreement, I rise to make the point of order that the Senate is without constitutional authority to advise and consent to the nominations of private incorporators of a private business enterprise, since the nominees whose nominations are before the Senate are private incorporators of a private business enterprise. Their nominations are not properly or constitutionally before the Senate at this time, nor can they be at any other time because, in the opinion of the Senator from Oregon, article II, section 2, of the Constitution is not applicable to the present situation.

Senators will find on their desks mimeographed copies of the main speech that I made last night. All of it is in the CONGRESSIONAL RECORD, and also in the RECORD are the ad libbed remarks I made in addition. I thought it would be helpful if I place copies of my manuscript speech before Senators today.

Senators will also find on their desks a summary of my position on the constitutional argument in a blue-backed memorandum. That argument reads as follows:

ARGUMENT

1. The Communications Satellite Corp. is a private business enterprise and its incorporators and directors are not officials of the U.S. Government within the meaning of article II, section 2 of the Constitution.

2. The Senate does not have the authority under the Constitution to confirm the appointment, election, hiring, or other selection of incorporators or directors of a private business enterprise.

A. Only those powers enumerated in the Constitution are conferred on the Legislature.

B. For the Senate to advise and consent to the nomination of an incorporator of a private business is not necessary and proper within the meaning of the Constitution.

C. Under established principles of statutory construction, the Constitution is presumed to have been intended to exclude that which it does not include.

D. Constitutional history makes clear the Constitution's intent to limit advising and consenting by the Senate to treaties and nominations of officers of the United States.

3. It follows that the confirmation by the Senate of the incorporators and directors of the Communications Satellite Corp. is either an unconstitutional enlargement of the constitutionally prescribed powers of the Senate or a superfluous act which does not in any way affect the right of the incorporators to take office:

4. By well-established rules of statutory construction, an act of Congress will not be construed to be without effect.

5. Conclusion: It follows that the confirmation by the Senate is not without effect; that under the Communications Satellite Act the incorporators cannot take office without the advice and consent of the Senate; and, therefore, this section of the Communications Satellite Act extends the authority of the Senate beyond its constitutionally enumerated limits and is unconstitutional.

Mr. President, I say to my colleagues that what we are being asked to do today is unconstitutional. The Constitution calls upon the Senate to confirm nominations of officers of the United States; but there is not one shred of evidence that these 14 incorporators of the Space Communications Corp. are to be, or were intended to be, officers of the United States. The testimony of the incorporators and the opinions of the Justice Department are entirely to the contrary. The incorporators are responsible only to the corporation.

The chief argument advanced in support of Senate confirmation has been the precedent of the National Bank Charter of 1816. We are being told that because certain directors of that infamous institution were also confirmed by the Senate, we should confirm the incorporators of the satellite corporation.

The national bank precedent is no precedent for wise, sound, or foresighted Federal policy. The operation and fate of that institution were all bad. It was a raid upon the American public for private profit, just as I believe this corporation to be. To have the Senate confirm directors having no responsibility whatever to the public was, in my opinion, unconstitutional then, and is unconstitutional now. I do not say that either the bank or this corporation is unconstitutional; but I do say that the present procedure is, unless and until the 1962 act is amended to give these incorporators public responsibilities and to make them accountable to the President and the Senate.

Last night I read into the RECORD the famous historic veto message of the incomparable President Jackson when he vetoed an attempt on the part of the Congress to renew the charter of the National Bank. I would be perfectly willing to rest my case on Jackson's veto. What was dealt with then was an act so infamous that it split the Senate for years and almost caused a political revolution in our country.

Finally, President Jackson vetoed a proposal to renew the charter.

In my judgment, when the issue which we are now discussing reaches the U.S. Supreme Court—and I shall do all I can within my ability to bring it eventually to the U.S. Supreme Court—there is no question in my mind as to what the decision of that Court will be; namely, that under article II, section 2, of the Constitution, the Senate cannot constitutionally confirm the nominations.

Therefore I do not believe the Senate should be asked to participate in an empty gesture. The record of the Senate should be clean in regard to abiding by the limits of article II, section 2.

The nominees are not officers of the United States. Therefore, in my judgment, the action of the Senate in confirming the nominations in effect would be unconstitutional.

Mr. CLARK. Mr. President, will the Senator yield me 2 minutes?

Mr. MORSE. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. MORSE. I should like to ask the status of the time. I shall be glad to yield to the Senator from Pennsylvania, but I believe that the opposition ought to consume a little time now.

The VICE PRESIDENT. The Senator from Oregon had 20 minutes. He has consumed 6 minutes. Therefore he has 14 minutes remaining.

Mr. PASTORE. Mr. President——

The VICE PRESIDENT. The Chair recognizes the Senator from Rhode Island.

Mr. MORSE. Mr. President, will the Senator from Rhode Island yield to me so that I may have a procedural discussion?

Mr. PASTORE. I yield.

Mr. MORSE. I desire that the time I have used be taken from the time available under the unanimous-consent agreement. I wish to make that clear. But I have raised a point of order. I believe there should be a ruling on the point of order, unless some Senator asks the Chair to withhold his ruling until Senators can discuss the question. Senators could proceed with the discussion, with the understanding that the time I have already used be taken from the time available under the unanimous-consent agreement.

Mr. PASTORE. That is satisfactory to the Senator from Rhode Island.

The VICE PRESIDENT. The Senator from Oregon has raised a constitutional question.

Mr. MORSE. On behalf of myself and the Senator from Wisconsin [Mr. NELSON].

The VICE PRESIDENT. A constitutional question has been explicitly raised. A constitutional question having been raised, uniform Senate precedents require that the Presiding Officer submit the question to the Senate for decision. Therefore, the question is as follows: Is consideration of the nominations by the Senate in accordance with the Constitution?

Mr. KEATING. Mr. President, will the Senator yield?

Mr. PASTORE. I yield 3 minutes to the Senator from New York.

The VICE PRESIDENT. The Senator from Rhode Island yields 3 minutes to the Senator from New York.

Mr. KEATING. Mr. President, I have reviewed the arguments of the distinguished Senator from Oregon, who is well known as an able lawyer. The first point of his argument, copies of which he has been kind enough to supply us, is that the Communications Satellite Corp. is a private business enterprise, and that therefore the incorporators are not officials of the U.S. Government.

With that point I agree. They are not.

The second point of the argument of the Senator from Oregon is that the Senate does not have the authority under the Constitution to confirm the appointment of directors of a private business enterprise.